2000 Nationwide Permits

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1999 Nationwide Permits

- 5 New Nationwide Permits
- 6 Modified Nationwide Permits
- 9 Modified Nationwide Permit General Conditions
- 2 New Nationwide Permit General Conditions

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1996 NWP Reissuance Process

- As a result of the 1996 reissuance NWP process, Corps decided to reissue NWP 26 for 2 year period and develop activity-specific NWPs to replace NWP 26
- Purpose:
  - Address legal vulnerability (i.e., Section 404(e))
  - Better address impacts to the aquatic environment

Five New NWPs

- NWP 39 - Residential, Commercial, and Institutional Developments
- NWP 41 - Reshaping Existing Drainage Ditches
- NWP 42 - Recreational Facilities
- NWP 43 - Stormwater Management Facilities
- NWP 44 - Mining Activities

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Six Modified NWPs

- NWP 3 - Maintenance
- NWP 7 - Outfall Structures and Maintenance
- NWP 12 - Utility Line Activities
- NWP 14 - Linear Transportation Crossings
- NWP 27 - Stream and Wetland Restoration Activities
- NWP 40 - Agricultural Activities

NWP 3 - Maintenance

- Repair, rehabilitation, or replacement of currently serviceable structures or fills
  - No notification required
- Removal of accumulated sediments and debris in the vicinity of an existing structure and the placement of rip rap to protect the structure
  - Notification required for all activities
  - Limit of 200 feet in any direction from the structure

NWP 3 - Maintenance (con't)

- Discharges into waters of the U.S. for activities associated with the restoration of upland areas damaged by storms, etc.
  - Notification required for all activities
  - Notification must occur within 12 months of the date of the damaging event; work must be completed in 2 years
  - Dredging to remove obstructions limited to 50 cubic yards below ordinary high water level

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NWP 3 - Maintenance (con't)

- Activities associated with the restoration of upland areas damaged by storms, con't:
  - Notification should include evidence to justify the extent of the proposed restoration, but DE makes final determination
  - No permit required to replace uplands

NWP 7 - Outfall Structures and Maintenance

- Original terms of NWP 7 retained for the construction of outfall structures and associated intake structures
- Maintenance excavation to remove accumulated sediments from intake and outfall structures, canals associated with intake and outfall structures, and small impoundments associated with intake and outfall structures

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NWP 7 - Outfall Structures and Maintenance (con't)

- Notification required for all activities
- Notification must include delineation of special aquatic sites (e.g., vegetated shallows in the canal)
- Excavation or dredging limited to the minimum necessary to restore to original design capacities and configurations

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NWP 12 - Utility Line Activities

- The construction, maintenance, or repair of utility lines, including intake and outfall structures
  - All waters of the U.S.
- The construction, maintenance, or expansion of substations associated with the utility line
  - Non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters
  - 1/2 acre limit
  - Notification required for the loss of greater than 1/10 acre of non-tidal waters of the U.S.

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NWP 12 - Utility Line Activities (con't)

- Foundations for utility line towers, poles, and anchors
  - All waters of the U.S.
  - Must be minimum size necessary
  - Separate footings for each tower leg should be used where possible

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NWP 12 - Utility Line Activities (con't)

- Access roads for the construction and maintenance of utility lines
  - Non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters
  - 1/2 acre limit
  - Should be constructed at-grade where possible
  - Notification for above-grade roads in waters of the U.S. for a distance greater than 500 feet or construction with impervious materials

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NWP 14 - Linear Transportation Crossings

- Public linear transportation crossings in non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters
  - 1/2 acre limit
- Public linear transportation crossings in tidal waters and non-tidal wetlands adjacent to tidal waters
  - 1/3 acre and 200 linear foot limits
- Private linear transportation crossings in all waters
  - 1/3 acre and 200 linear foot limits

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NWP 14 - Linear Transportation Crossings (con't)

- Notification required for:
  - The loss of greater than 1/10 acre of waters of the U.S.
  - All discharges in special aquatic sites
- With the notification, the applicant must submit:
  - A compensatory mitigation proposal to offset permanent losses of waters
  - A statement explaining how temporary losses of waters of the U.S. will be minimized

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NWP 14 - Linear Transportation Crossings (con't)

- NWP does not authorize non-linear features associated with the linear transportation crossing
- Activities must comply with FEMA or FEMA-approved local floodplain construction requirements (General Condition 26)

NWP 27 - Stream and Wetland Restoration Activities

- Authorized Activities:
  - Restoration of former tidal and non-tidal waters
  - Enhancement of degraded tidal and non-tidal wetlands and riparian areas
  - Creation of tidal and non-tidal wetlands and riparian areas
  - Restoration and enhancement of non-tidal streams and non-tidal open waters

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NWP 27 - Stream and Wetland Restoration Activities (con't)

- Only non-tidal waters can be relocated on the project site; tidal waters cannot be relocated or converted
- Relocated waters must be same type (i.e., emergent, scrub-shrub, forested, open water)
  - e.g., Cattail to diverse herbaceous plant community
- Focus on entire project - Does it increase the aquatic resource base even though small areas may be converted?

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NWP 27 - Stream and Wetland Restoration Activities (con't)

- Maintain general mix of aquatic resource types
- Authorizes the reversion of wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned, if there was a binding agreement between the landowner and NRCS or FWS, whether or not a Section 404 permit was required for the restoration, enhancement, or creation activity
- This NWP can be used to authorize the construction of mitigation banks

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NWP 39 - Residential, Commercial, and Institutional Developments

- Construction or expansion of building pads and foundations and attendant features for residential, commercial, and institutional developments
- Limited to non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters
- Attendant features include: roads, parking lots, garages, yards, utility lines, storm water management facilities, recreational facilities, etc.

US Army Corps of Engineers

NWP 39 - Residential, Commercial, and Institutional Developments (con't)

- Acreage limit - 1/2 acre
- 300 linear foot limit for filling or excavating perennial and intermittent stream beds
- Notification required for:
  - Losses of greater than 1/10 acre of non-tidal waters of the U.S.
  - Discharges into any open waters, including perennial and intermittent streams, below the ordinary high water mark

US Army Corps of Engineers

NWP 39 - Residential, Commercial, and Institutional Developments (con't)

- Notification must include a statement describing avoidance and minimization and compensatory mitigation proposal
- If open waters or streams on project site, will establish and maintain vegetated buffers, to the maximum extent practicable
- No stream channelization or relocation downstream of the point of the stream where the average annual flow is 1 cubic foot per second
- Subdivision provision applies

US Army Corps of Engineers

NWP 40 - Agricultural Activities

- Authorized activities limited to non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters:
  - Discharges into non-tidal wetlands by USDA program participants to increase production
  - Discharges into non-tidal wetlands by non-participants in USDA programs to increase production
  - Discharges into farmed wetlands to construct building pads for farm buildings
  - Discharges associated with the relocation of drainage ditches constructed in non-tidal streams

NWP 40 - Agricultural Activities (con't)

- For discharges into non-tidal wetlands by USDA program participants to increase production:
  - 1/2 acre limit
  - NRCS has lead, unless other types of waters impacted
  - Permittee must obtain a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS
  - Permittee must implement an NRCS-approved compensatory mitigation plan, if required
  - Permittee must submit a report to the Corps
  - Corps cannot add regional conditions

NWP 40 – Agricultural Activities (con't)

- Discharges into non-tidal wetlands by non-participants in USDA programs to increase production (or USDA program participants not authorized under paragraph (a)):
  - 1/2 acre limit
  - Notification to DE required for discharges resulting in the loss of greater than 1/10 acre of non-tidal wetlands
  - Notification must include delineation of affected wetlands
  - Notification must include a compensatory mitigation proposal
  - Corps can add regional conditions

NWP 40 - Agricultural Activities (con't)

- Construction of building pads for farm buildings:
  - Corps has lead
  - 1/2 acre limit
  - Farmed wetlands only
- Relocation of existing drainage ditches constructed in non-tidal streams:
  - Corps has lead
  - 300 linear foot limit for relocating drainage ditches

NWP 40 – Agricultural Activities (con't)

- Implementation of NWP 40
  - If only proposed activity is discharge into non-tidal wetlands by USDA program participant to increase production, NRCS has lead
  - If proposed activity involves discharges into non-tidal wetlands by USDA program participant and either the construction of a farm building or the relocation of ditches constructed in non-tidal streams, Corps has lead

US Army Corps of Engineers

NWP 41 - Reshaping Existing Drainage Ditches

- Modifying the cross-sectional configuration of existing serviceable drainage ditches constructed in waters of the U.S.
- Limited to non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters
- Cannot increase drainage capacity
- Cannot change the location of the ditch centerline

NWP 41 - Reshaping Existing Drainage Ditches (con't)

- Notification required for:
  - Sidecasting into waters of the U.S.
  - Reshaping greater than 500 linear feet of drainage ditches in waters of the U.S.
- Compensatory mitigation not required since ditch reshaping is intended to improve water quality
- Maintenance of drainage ditches is exempt under Section 404(f)

US Army Corps of Engineers

NWP 42 - Recreational Facilities

- The construction or expansion of recreational facilities that are integrated into the natural landscape
- Examples include hiking trails, bike paths, nature centers, and campgrounds
- Limited to non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters
- 1/2 acre limit

US Army Corps of Engineers

NWP 42 - Recreational Facilities (con't)

- 300 linear foot limit for filling or excavating perennial and intermittent stream beds
- Notification required for:
  - Loss of greater than 1/10 acre of waters of the U.S.
- The construction or expansion of golf courses and the expansion of ski areas may be authorized if they are integrated into the natural landscape and do not involve substantial amounts of grading or filling

US Army Corps of Engineers

NWP 43 - Stormwater Management Facilities

- Construction and maintenance of stormwater management facilities
- Limited to non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters
- 1/2 acre limit for construction of new SWM facilities
- 300 linear foot limit for filling or excavating perennial and intermittent stream bed
- No acreage limit for maintenance

US Army Corps of Engineers

NWP 43 - Stormwater Management Facilities (con't)

- No construction of new SWM facilities in perennial streams
- Notification required for:
  - Construction or maintenance of SWM facilities resulting in the loss of greater than 1/10 acre of non-tidal waters

US Army Corps of Engineers

NWP 43 - Stormwater Management Facilities (con't)

- Notification must include:
  - Maintenance plan
  - Delineation of affected special aquatic sites
  - Compensatory mitigation proposal
  - Statement of avoidance and minimization
- Compensatory mitigation not required for maintenance activities in designated maintenance areas of SWM facility

US Army Corps of Engineers

NWP 44 - Mining Activities

- Aggregate mining activities (i.e., sand, gravel, and crushed and broken stone)
- Aggregate mining activities limited to:
  - Isolated waters
  - Streams where the average annual flow is 1 cubic foot per second or less
  - Non-tidal wetlands adjacent to headwater streams
  - Lower perennial streams, excluding adjacent wetlands

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NWP 44 - Mining Activities (con't)

- No aggregate mining in waters of U.S. within 100 feet of the OHWM of headwater stream segments with average annual flows greater than 1 cubic foot per second
- No discharges in streams for aggregate mining activities below the 1 cubic foot per second discharge point or above lower perennial streams

US Army Corps of Engineers

NWP 44 - Mining Activities (con't)

- Hard rock/mineral mining activities (i.e., the extraction of metalliferous ores from below the substrate surface)
- Hard rock/mineral mining activities limited to:
  - Isolated waters
  - Non-tidal wetlands adjacent to headwater streams
- No beneficiation or mineral processing within 200 feet of the OHWM of any open waterbody

NWP 44 - Mining Activities (con't)

- For both aggregate and hard rock/mineral mining activities:
  - 1/2 acre limit, which includes the mined area in waters of the U.S. plus the acreage loss from support activities
  - Notification required for all activities

NWP 44 - Mining Activities (con't)

- Notification must include:
  - Description of affected waters of the U.S.
  - A statement of avoidance and minimization
  - Description of measures taken to minimize adverse effects to aquatic environment
  - Reclamation plan for aggregate mining in isolated waters and adjacent non-tidal wetlands and all hard rock/mineral mining

NWP 44 - Mining Activities (con't)

- Compensatory mitigation required for all wetland impacts
- Activity must be a single and complete project
- Examples of support activities:
  - Construct berms, roads, rail lines, dikes
  - Settling ponds and settling basins
  - Ditching
  - Stormwater management facilities
  - Mechanized landclearing

Nine Modified General Conditions

- General Condition 4 - Aquatic Life Movements
- General Condition 9 - Water Quality
- General Condition 11 - Endangered Species
- General Condition 13 - Notification
- General Condition 15 - Use of Multiple Nationwide Permits
- General Condition 17 - Shellfish Beds
- General Condition 19 - Mitigation
- General Condition 20 - Spawning Areas
- General Condition 21 - Management of Water Flows

NWP General Conditions

- Incorporated the Section 404 Only conditions into the General Conditions section
- All General Conditions are numbered consecutively
- Total of 26 NWP General Conditions

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General Condition 4 - Aquatic Life Movements

- Added a sentence stating that if the activity involves placing a culvert in a stream, the culvert must be installed to maintain low flow conditions

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General Condition 9 - Water Quality

- For NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, a water quality management plan must be adopted if necessary to ensure that the activities authorized by those NWPs will have no more than minimal adverse effects on water quality
- If state or local requirements are adequate, DE should not require a water quality management plan

General Condition 9 - Water Quality (con't)

- Vegetated buffers may be required as part of the water quality management plan (see General Condition 19)

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General Condition 11 - Endangered Species

- For activities that may affect Federally-listed endangered or threatened species, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat
- As a result of formal or informal consultation with the FWS or NMFS, the District Engineer may add species-specific regional endangered species conditions to the NWPs

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General Condition 13 - Notification

- Timing of notification process has been changed:
  - District Engineer has 30 calendar days to determine if notification is complete
  - If the notification is incomplete, the DE can request the required information only once
  - When the notification is complete, the DE has 45 calendar days to determine if proposed activity meets the terms and conditions of the NWP or exercise discretionary authority

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General Condition 13 - Notification (con't)

- Agency coordination process has been changed:
  - Coordination required only for NWP activities that result in the loss of greater than 1/2 acre of waters of the U.S. and require PCN to DE
  - Agencies have 10 calendar days to notify the District Engineer that they intend to provide comments
  - If an agency so notifies the DE, the DE will wait an additional 15 calendar days for the comments

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General Condition 13 - Notification (con't)

- The mitigation plan submitted with the notification can be either conceptual or detailed
- Moved mitigation information to General Condition 19

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General Condition 15 - Use of Multiple Nationwide Permits

- Changed title from “Multiple Use of Nationwide Permits” to “Use of Multiple Nationwide Permits” to better describe this practice
- Can use more than one NWP to authorize a single and complete project, provided the acreage loss of waters of the United States does not exceed the highest specified acreage limit of the NWPs used to authorize that project

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General Condition 17 - Shellfish Beds

- Changed title from “Shellfish Production” to “Shellfish Beds”
- In the text of this general condition, we have changed the phrase “concentrated shellfish production” to “concentrated shellfish populations” because the word “production” implies that this general condition applies only to areas actively managed to produce shellfish

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General Condition 17 - Shellfish Beds (con't)

- Use of the word "populations" makes this general condition apply to naturally-occurring shellfish populations, such as natural oyster bars or lobster grounds

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General Condition 19 - Mitigation

- Modified this general condition to allow the District Engineer to require the restoration, enhancement, creation, or preservation of aquatic resources to offset the adverse effects to the aquatic environment and ensure that the net impacts are minimal
- Added mitigation information from General Condition 13 to have only one condition addressing mitigation requirements of NWPs

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General Condition 19 - Mitigation (con't)

- Full compensatory mitigation will be required for all wetland impacts requiring a PCN
- Vegetated buffers next to streams or other open waters are an important component of the mitigation plan
- Vegetated buffers should normally be 25 to 50 feet wide on both sides of stream, but can be wider to address documented water quality concerns

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General Condition 19 - Mitigation (con't)

- If compensatory mitigation for wetland impacts is required and there are open waters on site, vegetated buffers will constitute no more than 1/3 of remaining compensatory mitigation after the permanently filled wetlands have been replaced on one-to-one acreage basis

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General Condition 20 - Spawning Areas

- Filling or excavating important spawning areas is prohibited
- Added the word “important” as modifier of “spawning areas” to limit the prohibition to spawning areas used by species harvested commercially for human consumption
- Activities that generate plumes of suspended sediment upstream of important spawning areas that can settle and smother those spawning areas are also prohibited

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General Condition 21 - Management of Water Flows

- The activity, to the maximum extent practicable, must be designed to maintain preconstruction downstream flow rates
- The activity must be designed to reduce flooding or erosion upstream and downstream of the project site, unless the activity is part of a larger system designed to manage water flows.

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General Condition 21 - Management of Water Flows (con't)

- District engineers cannot require detailed studies or hydraulic modeling to determine if a project complies with this general condition
- Compliance determinations will be qualitative, not quantitative

Two New General Conditions

- General Condition 25 - Designated Critical Resource Waters
- General Condition 26 - Fills Within 100-year Floodplains

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General Condition 25 - Designated Critical Resource Waters

- Condition applies to designated critical resource waters and adjacent wetlands
- Prohibition for NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44
- Notification required for NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38

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General Condition 25 - Designated Critical Resource Waters (con't)

- Designated critical resource waters, including adjacent wetlands:
  - NOAA-designated marine sanctuaries
  - National Estuarine Research Reserves
  - National Wild and Scenic Rivers (Condition 7)
  - Critical habitat for Federally-listed T & E species (Condition 11)
  - Coral Reefs
  - State natural heritage sites
  - Outstanding national resource waters officially designated by a State and approved by the DE after public comment

General Condition 25 - Designated Critical Resource Waters (con't)

- For activities affecting Wild and Scenic Rivers, the permittee must comply with General Condition 7
- For activities in designated critical habitat for endangered or threatened species, the U.S. FWS or NMFS must concur that the proposed activity complies with General Condition 11
- District Engineer may designate additional critical resource waters after notice and opportunity for public comment

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General Condition 26 - Fills Within 100-Year Floodplains

- General Condition applies to NWPs 12, 14, 29, 39, 40, 42, 43, and 44
- 100-year floodplains will be identified by FEMA's Flood Insurance Rate Maps or FEMA-approved local floodplain maps

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General Condition 26 - Fills Within 100-Year Floodplains (con't)

- For discharges below headwaters:
  - Prohibits the use of NWPs 29, 39, 40, 42, 43, and 44 to authorize permanent, above-grade fills in waters of the U.S. within the 100-year floodplain
  - For NWPs 12 and 14, permittee must notify DE and include documentation that discharge complies with FEMA or FEMA-approved local floodplain construction requirements

General Condition 26 - Fills Within 100-Year Floodplains (con't)

- For discharges in headwaters:
  - Discharges resulting in permanent, above-grade fills within the flood fringe can be authorized by NWPs 12, 14, 29, 39, 40, 42, 43, and 44 if the permittee notifies the DE and provides documentation that the discharge complies with FEMA or FEMA-approved local floodplain construction requirements
  - Discharges resulting in permanent, above-grade fills within the floodway cannot be authorized by NWPs 29, 39, 40, 42, 43, and 44

General Condition 26 - Fills Within 100-Year Floodplains (con't)

- For discharges in headwaters (con't):
  - For NWPs 12 and 14 activities in the floodway, permittee must notify DE and include documentation that discharge complies with FEMA or FEMA-approved local floodplain construction requirements

Floodplain Considerations

- All other activities authorized by NWPs in waters of the U.S. must comply with General Condition 21 (Management of Water Flows)
- General Condition 21 requires that the authorized work is designed to withstand expected high flows and not increase flooding upstream or downstream

NWP Decision Documents

- CECW-OR final Decision Documents for the issued NWPs
  - On HQ homepage and available in HQ and District offices for review
- Division Supplemental Decision Documents for the final Corps regional conditions
  - On District homepages and available in Division and District offices for review

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Mitigation Process for the NWPs

- Applicants must avoid and minimize impacts to waters of the United States on-site to the maximum extent practicable
- Compensatory mitigation will be required to offset losses of aquatic resource functions and values at least to the extent to ensure that the adverse effects on the aquatic environment are minimal
- Full compensatory mitigation will be required for all wetland impacts requiring a PCN

Mitigation Process for the NWPs (con't)

- Compensatory mitigation can be accomplished by:
  - Individual projects that restore, enhance, create, or preserve aquatic habitats
  - Mitigation banks
  - In lieu fee programs
  - Other consolidated mitigation methods
- Vegetated buffers are an important part of compensatory mitigation and will constitute a proportion of the required compensation

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Endangered Species Act Compliance

- The Corps has determined that the NWPs do not jeopardize endangered or threatened species or destroy or adversely modify their critical habitat, due to the Corps regulations and the NWP conditions
- The Corps has determined that NWPs have “no effect” on endangered species
- However, the Corps has requested programmatic consultation on endangered species

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Endangered Species Act Compliance (con't)

- Local operating procedures, including regional conditions, are important to ensure that authorized activities do not jeopardize endangered or threatened species or destroy or adversely modify their critical habitat
- To ensure that the local operating procedures and regional conditions are properly coordinated, the decision authority for adding regional conditions for endangered species has been delegated to the district engineer in General Condition 11.

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NEPA Compliance for the NWP Program

- An Environmental Impact Statement (EIS) is not required for the NWP Program, because the NWPs authorize only those activities with minimal adverse effects on the aquatic environment
- Corps issued a programmatic Finding of No Significant Impact (FONSI) for the NWP program on June 23, 1998

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NEPA Compliance for the NWP Program (con't)

- Although an EIS is not needed for the NWP program, we have agreed to prepare a Programmatic Environmental Impact Statement (PEIS) to provide further assurance to the public that the NWP program complies with NEPA
- Benefits of preparing an PEIS:
  - Lawsuit: NRDC v. Corps
  - Dept. of Justice - concerns regarding non-compliance with NEPA
  - Agencies believe EIS is needed
  - Satisfy legal vulnerability

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NEPA Compliance for the NWP Program (con't)

- PEIS will review the NWP program to further ensure that the NWPs authorize only minimal impacts and that our mitigation approach is sound
- We have contracted the Institute for Water Resources to prepare the PEIS
- Corps will be the sole lead agency for the PEIS and will determine the scope of the PEIS
- The PEIS will focus on the NWP process
- The PEIS will not assess the individual and cumulative adverse effects of specific NWP activities on the aquatic environment

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NEPA Compliance for the NWP Program (con't)

- Scoping meetings for the PEIS were held in May 1999 in the following locations:
  - Sacramento, California
  - Fort Worth, Texas
  - Washington, DC
- Final PEIS scheduled for early 2001

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NEPA Compliance for the NWPs

- For each new and modified NWP, an Environmental Assessment, Section 404(b)(1) analysis, and FONSI has been prepared
- A supplemental EA for each new and modified NWP will be issued for each district by the Division Engineer, with a certification that the NWP, with regional conditions, will authorize only activities with minimal adverse effects on the aquatic environment
- The supplemental EAs will be attached to the national EAs for the NWP record, to demonstrate compliance with NEPA

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Assessment of Cumulative Impacts Resulting From NWP Activities

- Cumulative adverse effects on aquatic environment caused by activities authorized by NWPs, regional GPs, and individual permits must be monitored by districts on watershed basis
- Assessment of cumulative impacts on watershed basis is the only technically sound approach
- Cumulative impact assessment cannot be done nationally because functions and values of aquatic resources vary across the country`

Assessment of Cumulative Impacts Resulting From NWP Activities (con't)

- Districts have best understanding of local conditions and processes
- Districts need to monitor gains (through compensatory mitigation) as well as losses
- New data collection requirements will help
- Regional conditions are an important tool to ensure that cumulative adverse effects on the aquatic environment are minimal

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Assessment of Cumulative Impacts Resulting From NWP Activities (con't)

- Division engineers can revoke NWPs in waters of particularly high value or in specific geographic areas where the use of the NWPs may result in more than minimal cumulative adverse effects on the aquatic environment